IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.11.2006

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

Civil Revision Petition (PD) No.625 of 2004

Ganapathy Subramanian — Petitioner[20th Defendant].

v.

1.S.Ramalingam
2.Manivannan
3.Suresh
4.Rajesh
5.Ramesh
6.Padmavathi
7.Gandhi @ Palaniraj
8.Nehru @ Rethinavelu
9.Indira
10.Ramarethinam
11.Magudapathi
12.Iyangavan
13.Pari @ Vidyathavan
14.Rajam @ Punithavathy
15.Gnanam
16.Babuji @ Veeralakshmi
17.Chitra @ Navarathinam
18.Savithiri
19.Pattammal
20.Krishnaswamy
21.Murugaian
22.Sakunthala
23.Saraswathi
24.Ilango — Respondents [Plaintiffs, Defendants 1 to 4 and 19].

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Civil Revision Petition filed under Article 227 of the Constitution of India invoking the extraordinary power of judicial superintendence in respect of taking on file and issuance of summons in O.S. No.20 of 2004 on the file of the Principal District Munsif, Karaikal.

For petitioner : Mr.Srinath Sridevan

For Respondents 1 to 5 : Mr.S.V.Jayaraman, Senior Counsel for Mr.S.Sounthar

Respondents 6 to 24 given up.

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ORDER

This revision is filed invoking the jurisdiction of this Court under Article 227 of the Constitution of India to strike off the plaint in O.S. No.20 of 2004 on the file of the District Munsif Court, Karaikal, Pondicherry.

2. The case of the petitioner is that respondents 1 to 5 filed a suit in O.S. No.20 of 2004 on the file of the District Munsif, Karaikal, seeking for permanent injunction against the 20th defendant, who is the revision petitioner, restraining him from making or continuing with any construction in any part of the suit property with the collusion and connivance of the other 19 defendants either by himself or through his men and for a mandatory injunction against the petitioner directing him to remove any construction made or to be made by him during the pendency of the suit.

3. It is the pointed case of the petitioner that the said respondents earlier filed a suit in O.S. No.116 of 1998 on the file of the District Munsif Court, Karaikkal against one Sivasubramanian and three others seeking for a decree for permanent injunction restraining the defendants therein from interfering with the peaceful possession and enjoyment of the suit property in that case. The suit property in respect of which relief was claimed in that case was 180 kuzhies of Manaikattu with a building bearing municipal door No.66/1, with the bio gas plant and standing trees manure pit, cattle shed etc. The trial court decreed the suit for an extent of 100 kuzhies only. On appeal in A.S. No.45 of 1993, the decree was modified by declaring that the plaintiffs were entitled to a decree in respect of 136 kuzhies of land. Two second appeals were filed by the respective parties in S.A. Nos.1017 and 1224 of 1996 against that order. By judgment dated 01.09.1998, the decree of the trial Court was restored in the second appeal. The petitioner is the purchaser of the property which was a portion of the subject matter of the suit property. Now, the respondents/plaintiffs, on an erroneous view of the matter, filed the present suit including the extent for which injunction decree has not been granted in the earlier round of litigation by arraying the legal representatives of the deceased Subramanian along with the petitioners. Hence, the present revision is filed by the subsequent purchaser, the 20th defendant invoking Article 227 of the Constitution of India contending that the present suit is abuse of process of law and the suit should not have been taken on file.

4. It is the contention of the learned counsel for the petitioner that originally, the trial Court granted a decree only in respect of 100 kuzhies in favour of the respondents and recorded a finding that the defendants therein who were the vendors of the petitioner/20th defendant are having a right over the suit property over an extent of 60 kuzhies and remaining 20 kuzhies belong to nobody, which decree has been confirmed by this Court in the second appeal. Hence, the suit has to be

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rejected by this Court as abuse of process of law, and the suit is hit by res judicata. The learned counsel also relied upon the judgments in the cases of Rani Mohanraj v. P.Rajarathinam, 1999-2 LW 757; S.Viswanathan v. Sri Muruga Agencies, 2002 (1) TLNJ 13; K.K.Swaminathan v. Srinivasagam, 2004-1-LW 250; and Hunter v. Chief Constable of West Midlands, (1981) 3 All ER 727, to bring home his contention that the suit has to be rejected.

5. Heard the learned counsel for the petitioner and perused the materials available on record.

6. Article 227 of the Constitution of India confers on every High Court the power of superintendence over all Courts and Tribunals through out the territory in relation to which it exercises jurisdiction excepting any Court or tribunal constituted by or under any law relating to the armed forces. Without prejudice to the generality of such power, the High Court has been conferred with certain specific powers under clauses (2) and (3) of Article 227 of the Constitution. It could be seen that the power of superintendence so conferred on the High Court is administrative as well as judicial and is capable of being invoked at the instance of any person aggrieved. The paramount consideration behind vesting such wide power of superintendence in the High Court is to clear the path of justice. Such a power of superintendence is not subject to technicalities of procedure or traditional fetters. That power so conferred cannot also be regarded as appeal or revisional jurisdiction and should not be exercised in the garb of exercise of supervisory jurisdiction under Article 227 of the Constitution and hence, the Court has devised a self imposed rule of discipline on this power. The supervisory jurisdiction can be refused to be exercised when an alternative efficacious remedy by way of defending the suit or filing an appeal or revision is available to the person aggrieved. The Court shall have regard to the legislative policy formulated on experience and expressed by enactments where the legislature in exercise of its wisdom has deliberately chosen certain orders and proceedings to be kept away from the appellate or revisional jurisdiction in the hope of accelerating conclusion of the proceedings and avoiding delay and procrastination which is occasioned by subjecting every order at every stage of proceedings to judicial review by way of appeal or revision.

7. It is not denied that the powers conferred upon the High Court under Article 227 of the Constitution of India are extraordinary and discretionary power as distinguished from ordinary statutory power. No doubt, Article 227 of the Constitution conferred a right of superintendence over all Courts and Tribunals throughout the territories in relation to which it exercised jurisdiction, but no corresponding right is conferred upon the litigant to invoke the jurisdiction as a matter of right. In fact, the power under Article 227 of the Constitution of India casts a duty upon the High Court to keep the inferior Courts and tribunals within the limits of its authority and that they do not cross the limit ensuring the performance of their duties in accordance with law conferring power within the ambit of the

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enactment treating such Court and Tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party.

8. In Waryam Singh v. Amarnath, AIR 1954 SC 215, the Supreme Court has held that the power of superintendence conferred by Article 227 of the Constitution has to be exercised most sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors. This position of law has been reiterated in the case of Nagendra Nath Bora v. Commissioner of Hills Division, AIR 1958 SC 398; and in Bathutmal Raichand Owal v. Laxmibai R. Tarta (1975) 1 SCC 858, wherein it was held that the High Court cannot in guise of exercising its jurisdiction under Article 227 of the Constitution, convert itself into a Court of appeal, when the Legislature has not conferred a right of appeal. After referring to the judgment in the case of R. v. Northumberland Compensation Appeal Tribunal, Ex Parte Shaw, (1952) All ER 122; the Supreme Court in the case of Chandravarkar Sita Ratna Rao v. Ashalata S.Guram, (1986) 4 SCC 447, held that it is true that in exercise of jurisdiction under Article 227 of the Constitution, the High Court could go into the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view of fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution to look into the fact in the absence of clear and cut-down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a finding within the jurisdiction of the inferior tribunal except where the findings are perverse and not based on any material evidence or it resulted in manifest injustice (see Trimbak Gangadhar Telang v. Ramchandra Ganesh Bhide, (1977) 2 SCC 437). Except to the limited extent indicated above, the High Court has no jurisdiction, vide Ouseph Mathai v. Abdul Khadir, (2002) 1 SCC 319. It was also held by the Supreme Court in the case of State v. Navjot Sandhu, (2003) 6 SCC 641 that though the High Court has power of superintendence and that power should not exercised in appreciation of evidence.

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9. By the above exposition of law ruled by the Supreme Court, the scope and amplitude and the power of the High court in invoking Article 227 of the Constitution of India has been made crystal clear.

10. As already stated, learned counsel for the petitioner relied upon the decisions in the cases of Rani Mohanraj v. P.Rajarathinam, 1999-2 LW 757; S.Viswanathan v. Sri Muruga Agencies, 2002 (1) TLNJ 13; K.K.Swaminathan v. Srinivasagam, 2004-1-LW 250; and Hunter v. Chief Constable of West Midlands, (1981) 3 All ER 727 in support of his contentions.

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11. The facts of the case in Rani Mohanraj v. P.Rajarathinam, 1999-

2 LW 757 is that one Mohanraj died on 23.11.1997. He had a minor daughter by name one Varsha Dhanasri. The brother of the deceased Mohanraj filed a Guardian OP to declare him as the guardian of minor Dhanasri and to have custody of the property of the deceased Mohanraj, who bequeathed under his will, to his minor daughter, against Mohanram's wife and her father. The brother also moved an application for interim injunction restraining the mother of the minor daughter and the parents of the mother from interfering with the possession of the property. Ad interim injunction was also granted. That order was carried on by way of revision by the mother challenging the locus standi of Rajarathinam in filing the OP and also getting him appointed as a guardian, when the natural guardian is alive. That order of interim injunction was set aside by this Court in the revision and further, the lower Court was directed to pass orders about maintaining the guardian OP and further directed the trial Court to decide on the question on the territorial jurisdiction before entertaining that application. In pursuance of the direction issued by this Court, the trial Court dismissed the OP. Yet another factor is that the mother filed two complaints before the Commissioner of Police - one prior and another subsequent to the order passed by this Court in the revision to the effect that Rajarathinam stealthily removed the belongings of the mother and the minor daughter and it amounts to theft. When the police wanted to investigate into the complaint, the said Rajarathinam filed a suit against the State, Police and the mother seeking for a relief of permanent injunction restraining the defendant from preferring vexatious complaint and for permanent injunction restraining the defendant therein from removing the articles from Rajarathinam. In this factual circumstances of the case, on a reading of the pleadings, the Court came to the conclusion that the suit filed against the State and the police officer and the wife is a vexatious one and on that peculiar facts and circumstances of the case, the Court, after satisfying itself that there was no chance for the said Rajarathinam to succeed in the suit, invoked its power under Articl3 227 of the Constitution of India and stopped the proceedings preferred by the said Rajarathinam summarily by ordering striking off the plaint.

12. S.Viswanathan v. Sri Muruga Agencies, 2002 (1) TLNJ 13 is a case in which it was held that the facts of that case disclosed a dismal and deliberate case of collusion between the sub tenant and the chief tenant in a rent control proceedings. On the facts of that case, this Court has come to the conclusion that the chief tenant and the sub tenant played hide and seek and hood wink process of law. In those circumstances, after making a cautionary note that the power under Article 227 of the Constitution of India could be exercised sparingly to strike off a plaint in a suit pending before a trial Court, except in exceptional circumstances, the Court brought that case under the purview of exceptional circumstances carved out.

13. K.K.Swaminathan v. Srinivasagam, 2004-1-LW 250 was a case filed seeking for cancellation of a decree passed in an earlier suit, which was confirmed on appeal and in second appeal on the ground that the said decree was obtained by use of a false document. In that suit, an application was filed seeking to send the suit promissory note to the

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handwriting expert and it was dismissed and a decree was passed after full trial. When the execution petition was pending, the dismissal of the application seeking to send the promissory note to the handwriting expert, has been carried on in a revision before this Court and in those factual circumstances of the case, having found that the validity and genuineness of the promissory note was directly and substantially in issue in the earlier suit which has been affirmed in the second appeal by the High Court, the subsequent suit was held to be an abuse of process of law and the Court passed an order for striking off the plaint.

14. Hunter v. Chief Constable of West Midlands, (1981) 3 All ER 727 is also a case in which a civil action has been brought claiming damages on the allegation against the police officer for assaulting the petitioner to procure confessional statement. That civil action was regarded as an abuse of process of law on the ground that the very same allegation that the petitioner was assaulted by the police officer to procure confessional statement has been raised before the criminal Court which was negatived and the petitioner was convicted in a criminal case.

15. I am of the view that none of the above said decisions would advance the case of the petitioner as there is an ocean of difference between the facts of those cases and the facts of the present case. The earlier suit filed by the respondents was a suit for injunction in respect of 180 kuzhies of Manaikattu in which, on the basis of the oral evidence, a decree for injunction has been granted in favour of the respondent only in respect of 100 kuzhies. A decree drawn in that suit is also made available. That also indicates that the injunction decree was granted only in respect of 100 kuzhies for the respondents herein. No other decree was granted. Some of the observations in the judgment has been read out to contend that a decree has been granted in favour of the vendor of the petitioner in respect of 60 kuzhies and in respect of the remaining 20 kuzhies it was found that it belonged to nobody. Whether that decree could be regarded as a decree granted in favour of the petitioner in respect of 60 kuzhies is a moot question to be decided. Certain observations made in the suit notice has also been highlighted before this court to contend that the respondents have no regard to the orders and judgments passed by the Courts. I am of the view that the reasoning stated in the notice cannot by itself be a factor to reject the plaint by invoking the supervisory jurisdiction. If the petitioner is of the view that he is having a good case to have the plaint rejected, he would very well place the materials before the trial Court itself and seek for the required relief in his favour by placing the materials on which reliance has been placed before this Court. Above all, the trial Court has not committed any manifest error except ordering issuance of summons to defendants in the suit filed by the respondents herein.

16. The supervisory jurisdiction of this Court could be invoked only when the trial Court has committed any error. Mere filing of a suit by the respondents and taking the suit on the file by the trial Court cannot be regarded as an act on the part of the trial Court to

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transgress its jurisdiction or its bound. Of course, the party who files the suit might have filed the suit suppressing material facts or made up the suit to his convenience for seeking the relief which is not otherwise entitled to, But that facto has to be considered by the trial court during the relevant point of time. There is no impediment or embargo for the petitioner to put forth his contentions before the trial court to strike off the plaint at the threshold. As this Court is relegating the petitioner to go before the trial Court for the relief, the Court has restrained itself from going into the facts of the case, as any observation made by this Court would have a bearing on the suit, which is pending before the trial court. Of course, the petitioner is also having an effective remedy in the Code of Civil Procedure itself to have the suit struck off and he could very well avail that remedy. On the above said reasoning, I am not inclined to grant the relief as prayed for in the revision.

17. Yet another factor is also to be taken into consideration. Of-late, High Courts are flooded with cases and the Courts have reached a saturation point with the backlog starring on the face and the disposal of the cases by the Courts for the past four or five years could never match the institution of the cases. When Courts are facing such a situation, this sort of approaching this Court can be avoided. By saying so, this Court should not be misunderstood of shirking of its responsibilities, but it has to be taken in the way it is stated, that is, the Court has just high lighted the state of affairs. This Court also sends a cautionary note to the litigant public to approach the court of first instance first.

18. For the reasons stated in the foregoing paragraphs, this Court is of the view that this is not a fit case for this Court to invoke the jurisdiction of this Court under Article 227 of the Constitution of India. The petitioner can avail the common law remedy available to him first. The revision is dismissed with the above observations. The trial Court, on the petitioner approaching it for the required relief, shall dispose of the same in accordance with law, without in any way being influenced by anything said in this order. The revision is dismissed. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To
1. The Principal District Munsif,
Karaikal, Pondicherry [with records]

2. The Record Keeper, VR Section, High Court, Madras.

+ 1 CC To Mr. Srinath Sridevan, Advocate SR NO. 56255

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